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British Board of Trade

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THE BRITISH BOARD OF TRADE

A STUDY OF ITS INFLUENCE IN COLONIAL ADMINISTRATON, WITH SPECIAL REFERENCE TO NEW YORK, 1696-1754

BY

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P R E F A C E

This paper is not intended to be final. Only a portion of the great mass of material on the subject has yet been consulted. Not only has investigation been confined to a portion of the sources, but only one class of sources has been used in any thorough manner. The result is that there are many gaps in the evidence, and possibly some conclusions are founded on too slender data.

Such a condition, however, was unavoidable. Time was too short for all the available material to be used; and there are many sources that should be consulted that were not obtainable. The writer expects to be able to consult the principal remaining sources and thus complete this study of the relations of the Board of Trade to the colonies. This paper, therefore, is offered only as an introduction to a much fuller treatment that is to follow. In this fuller treatment the relations of the other colonies to the Board are to be worked up just as fully as have been those of New York. Such a treatment is necessary in order to make the results at all conclusive.

CHAPTER I.

History and Personnel of the Board of Trade

The restoration of Charles II marks the beginning of attempts at systematic control of England's valuable colonial possessions. The preceeding half century had been a period of experimentation. English statesmen were only beginning to grasp the full importance of colonial empire. Cromwell, perhaps, realized the significance of the word empire as no other statesman of his time, but he died too soon. Everything that he planned was abandoned at his death, consequently we cannot trace plans for colonial control to him or his period.

Charles' first colonial measure was only temporary in its character. A committee of ten[1] was appointed to consider petitions and examine other papers relating to plantation affairs. Before the end of the year this temporary committee was succeeded by a "standing council of trade."[2] This was composed of four of the leading members of the Privy Council, together with the chancellor and treasurer and forty other noblemen and gentlemen. They were given power to correspond with the several governors and to take into consideration all things relating to the government of the plantations. No other change is recorded for ten years. In July, 1670, a council of ten was appointed with apparently the same powers as the other council. The president of this body was given

1. N. Y. Doc. III. Int. p.13.
2. Ibid.

a salary of seven hundred pounds and the others five hundred pounds per year.[1]. The chancellor and other officers of state were to attend the meetings of the council and give such suggestions as they thought fit. There were some unimportant changes in the personnel of the council during the next few years but no other changes worth noting.

In December, 1674, the King, by royal commission, abolished the council, and in the following year all matters relating to foreign plantations were placed in the hands of a committee of the Privy Council.[2]. This committee was to meet once a week for the transaction of business, and, from time to time, it was to report to the King in Council. There was no further change in the plan of control under James II nor under William III until the permanent establishment of the Board of Trade in 1696.

The war which had been in progress since 1689 had resulted in heavy losses to British merchants. These losses gave the opposition in Parliament an opportunity to attack the administration. In the debate in the Parliament of 1695 it was even asserted that the ministry had connived at these losses and that their policy was to allow the Dutch to become supreme in commercial affairs. After some debate the Commons passed the following resolutions: 1. A Council of Trade should be established by act of Parliment; 2. Commissioners to constitute this council were to be nominated by Parliament.[3]. In accordance with these two resolutions a bill was ordered to be brought in. The Whigs at the order of the King op-

1. N. Y. Doc. III, Introduction, p.13.
2. N. Y. Doc. III, p.14.
3. Parl. Hist., vol. V, 977.

posed this bill on the ground that it was an attempt to change the constitution of England in a vital particular. It was argued that the executive part of the government rested with the crown; and that this bill proposed to take a part of the executive control out of the hands of the King and vest it in a commission chosen by Parliament. The fear was also expressed that a council for trade established by authority of Parliament would increase its authority until it controlled the whole of the admiralty. Perhaps some such result was intended by the Tories who were pushing the measure. In order to silence the clamors of the opposition it was determined to establish a Board of Trade by royal commission. This commission bears the date May 15, 1696. It created a Board of Commissioners for plantation affairs, consisting of the principal secretaries of state and eight others whose names were given.

The commission[1] empowered the Board to take into consideration the foreign trade of England and also the care of the poor of the kingdom. For these two purposes three members constituted a quorum. The most important work of the Board, however, was the control of plantation affairs. For this more important duty five members must be present. The particular things they were to take cognizance of may be divided into two general divisions, the trade interests of England and government within the plantations themselves.

The instructions as to their work in furthering the trade interest of the home country bear the distinct stamp of the prevailing economic philosophy of the time, namely mercantilism. Colonies existed only to be exploited in the interests of the mother

1. N. Y. Doc. IV, 145.

country. Hence the Board were to inform themselves of the nature of the soil in the different colonies, discover what could be produced there to the best advantage, and the industries that might become harmful to similar industries in England. The Board was also to study the best methods of settling and to do all in its power to induce the colonists to produce naval stores and other things that were then imported from foreign countries. While the Board was charged with the duty of encouraging those industries in the colonies that would furnish raw materials for English manufactures and for the British navy, it was at the same time to discourage all industries that would tend to make the colonies economically independent.

So far as the colonies were governed directly by authority from the English government, it was taken for granted that such authority was vested in the crown. Government was by royal prerogative. The main details of the exercise of this prerogative were entrusted to the Board. They were to investigate the administration of justice, consider carefully the instructions to the governors, suggest what should be omitted or changed, and consider persons for the various offices in the colonies. The Board was also empowered to have control of legislation within the colonies, determine what laws should or should not be passed by the assemblies, and hear complaints of mal-administration. They were to require an account of all moneys expended and to have full power to send for persons and papers, to examine persons on oath and to consult with the crown lawyers. In short they were to carry out the royal intention in all matters relating to the colonies. The power, how-

ever, was not absolute, but measures determined upon by the Board were to go through the form, at least, of being determined by the King in Council.

The first Board was made up of excellent men. The president, the Earl of Bridgewater, was not especially noted for his knowledge of colonial affairs, but he was assisted by some of the best men in England. Sir Phillip Meadows and William Blathwayte had been connected with colonial affairs for years. Each of them had served on the old committee of the Privy Council, and Blathwayte had been secretary of that body. Other members of national importance were John Locke, the famous philosopher; John Pollexfen, a man of very wide practical experience as a merchant, and a man who had won notice as a writer on economics; and Abraham Hill, a noted scientist. The other two men, John Methuen and the Earl of Tankerville were very well known in diplomatic and political affairs. As a body it was as select a group of men as could have been chosen.

The best of these men remained on the Board for some years, other members were changed from year to year. In 1699, Thomas, Earl of Stamford, was made president, and with a slight interruption, held that office until 1711. He was one of the most efficient officers that ever presided over the Board. His immediate successors were men of far less importance and held office for only short periods. The membership of the Board continued good until the accession of George I. There is scarcely a name in the entire list that is not found in the great English work.[1]. It is not necessary to mention all of them, but they were of no less promi-

1. Dictionary of National Biog.

nonce than such men as Lord Dartmouth, Sir John Cotton, Francis Gwynn, and Arthur Moore.

The last ministry of Queen Anne had been Tory. On the accession of George I the Whigs regained full control of the government. Not only did George select Whigs for his advisers, but he selected some of the lesser politicians in preference to such great men as Marlborough. The first election resulted in an overwhelming victory for the Whigs. The subsequent Jacobite rebellion completed the work of effectually driving every Tory from office. No department of state escaped. Efficient service was no protection against removal from office. The Board of Trade and the colonial service were no exceptions to the general sweeping changes. Not a single one of the former efficient members retained his place on the Board. Their places were filled with inefficient and, in most cases, unknown men. Only three out of the eight members are mentioned in the Dictionary of National Biography, and these were men of little note. The same general condition exists in all the appointments until 1748. It is only occasionally that prominent men are made members. The majority of them were such men as Martin Bladen, who served from 1717 to 1746. He made such a sinecure of his position that when he did attend to his official duties he was familiarly called "trade" and his colleagues "the board."[1].

Such was the general character of the members of the Board during the period of Whig ascendency. The presidents deserve more careful mention. The first president under George I held office for about a year. He was succeeded by Henry, Earl of Suffolk. The

1. Dict. of Nat. Biog.

latter was probably Henry Bowes-Howard, the son of the King's mistress. In 1718 he in turn gave place to the Earl of Holderness. Holderness was an efficient officer, and during his brief administration colonial affairs received careful attention. Within a year, however, he, too, was superseded. His successor was Thomas, Earl of Westmoreland, who continued in office until 1735. Very little in the way of praise can be said concerning his record as an officer. He cannot be said to have been especially efficient or inefficient. He was simply a man of mediocre ability, who was content to allow things to drift. He was followed by Benjamin Mildway, who served for two years. If one can judge his ability by the work of the Board during his administration, he must be ranked as one of the three ablest presidents. Colonial laws that had not been read for years were examined and passed upon. More laws were probably disallowed in the first year of his administration than in the last ten years of that of his predecessors. John Monson followed him in office in 1737. He has the unique distinction of being president during the most inefficient period in the history of the Board. He was one of Newcastle's favorites, and was scarcely more efficient in colonial affairs than that famous politician.

The appointment of George Dunk, Lord Halifax, as president in 1748 marks a distinct era in the history of the Board. Unlike his predecessors he was not simply dependent upon Newcastle, but he himself had a considerable following in the House of Commons. With the utmost energy he set to work to enlarge British commerce, improve the trade relations with the colonies, restore the influence of the home government within the colonies and increase the impor-

tance of his own office. He was a man with a policy and wished to be free to carry out his own ideas. To this end he sought to have the government of the West Indies placed entirely under his control and himself created third Secretary of State for that part of the world. This policy failed in 1751, but his ambition was realized six years later when he was finally made colonial secretary and admitted to the cabinet.

The colleagues of Halifax were also men of a distinctly different type from those who had served in the preceding years. Some of the new appointees were his personal followers. Chief among these should be mentioned Charles Townshend, afterward famous for his colonial measures. Another prominent member was Thomas Robinson, who later became secretary for the Southern Department and leader in the House. Last of all should be mentioned Andrew Stone, the tutor of George III, and the man who was supposed to have instilled into the mind of the latter his ideas of arbitrary government.

The efficiency of the Board varied with its personnel. It has already been said that able men were in control until 1714. During that time the Board was fulfilling its mission. Colonial affairs were looked after as they had not been before. Piracy and illegal trading were almost suppressed. Good men were sent out as governors, and they were supported in their efforts to carry out their instructions. The War of the Spanish Succession interfered with colonial control and enabled the assemblies to encroach upon the prerogative; but as soon as the war closed an earnest effort was made to regain the lost authority.

With the changes following the accession of George I comes a marked change in the position of the Board. The new men were unacquainted with colonial affairs, and not of such a character as to increase the dignity and importance of their offices. The Board ceases to be the controlling influence in colonial affairs. Instead of being consulted in regard to appointments for colonial positions, it found its protests against the appointment of incompetent officers ignored. The Board gradually degenerated into a committee for the Privy Council, and its main business was to act as a bureau of information rather than a bureau of administration.

The period of degeneration continues until 1748, becoming a little more pronounced after the accession of Newcastle to the head of the Southern Department in 1724. Degeneration may be said to have been complete in 1737 and to have been effectually ended by the reforms of 1752. During the period of gradual decadence there were, however, occasional indications of energy. In 1718 Holderness was president of the Board. There were no other changes in the membership, yet there is new energy noticeable in every action. Laws that had been unread for the last four years were examined and many of them disallowed. The energy thus acquired does not entirely die out for some years. In 1725 the colonial laws were again carefully examined, some disallowed and others laid aside for future consideration. They were not again considered for ten years. At that time there was another change in the presidency. A change is noticeable at once and lasts only until he goes out of office, two years later. During this period all the colonial laws were reread and some action taken in regard to them. The governors were called

upon for more careful reports. Laws infringing the prerogative or the laws of trade were promptly disallowed. The shortcomings of the charter and proprietary colonies were reported to Parliament. But the energy disappears with the accession of Monson to the presidency in 1737.

From 1737 until 1748 the Board was either indifferent or hopelessly incompetent. It is a period of unhindered drifting. The colonies were left to their own devices, and they were not slow in discovering the fact. This is the period of the greatest encroachments of the New York assembly upon the power of the governor. The governor was reduced to a mere figure head. His appeals to the Board were allowed to go unheeded. The letters of the Board became few and extremely brief. From 1739 to 1746 it wrote an average of about one letter a year, yet the governor was informed that letters were written as often as necessary. From 1746 till 1750 there was but an average of one letter in two years, and these only asked for reports on population, trade, Indian affairs, or copies of the journals of the assembly and the council.

With the appointment of Halifax, the period of indifference ends. Conditions in New York had become so notorious that the Privy Council called upon the Board for a full report. This was prepared with the utmost care. Papers that had been unread in the Plantation Office for years were now examined. The report was months in preparation, but finally it appeared in 1751.[1]. It is a voluminous affair and a mine of information concerning the struggle between the New York Assembly and the governor. For once the re-

1. N. Y. Doc. VI., 614.

port of the Board was read. The Council ordered the Board to prepare new instructions for the governors. These were sent out the next year and from that time on the Board attempted to regain the ground lost during the preceding years. Every detail of colonial affairs was examined into and an effort made to prepare the colonies for the struggle with the French that was recognized as inevitable; but the colonies had enjoyed practical independence in government and trade affairs so long that it was no longer possible to enforce the former authority of the British government by a mere exercise of royal prerogative. The final failure to enforce control, and the appeal to the power of Parliament, ending in the revolt of the colonies, is an interesting subject in the history of the Board, but lies beyond the province of this paper.

From the foregoing account it seems clear that the importance of the Board depended upon two factors, the character of the man at the head of the Board itself, and the character of the ministry. Of these factors the latter at first thought appears the most important for the Board was appointed by the ministry. After he was once appointed, however, the personality of the president of the Board was the potent factor. The administrations of Stamford, Holderness and Mildmay were periods of efficiency. In direct contrast to Mildmay's efficient rule is the wretched indifference of his successor, Lord Monson. The ministry was essentially the same for some years, and so the membership of the Board was essentially so. The difference must have been due to the difference in the two men. Halifax also is in direct contrast to Monson. Newcastle was still in power; but Halifax was able to increase the dignity of his of-

fice and really bring about the golden age of the Board, simply by his own energy. It certainly seems a fair inference that this golden age of the Board is due to the one fact that it had, from 1748 to 1761, the greatest president in its whole history.

CHAPTER II.

Administrative Relations of the Colonies and the Board

Problems of administrative relations, as far as the Board was concerned, were questions of creating governmental machinery within the colonies, maintaining the proper relations between the parts of the government thus created, and securing due subordination to the home government. The discussion of the way the Board met these problems falls naturally into four heads, viz; instructions to the governors, repeal of colonial laws, justice and its administration, and revenue and its expenditure. We proceed to the discussion of each in order.

I.

Instructions to the Governor.

The establishment of the Board of Trade does not mark any new policy in regard to the source of ultimate authority in the colonies. From the date of the first settlements the current theory was that all government there flowed from the King. It has already been pointed out that the attempt on the part of Parliament to create a Board of Trade was in reality an attempt to place trade matters within the control of a Parliamentary committee. It has also been pointed out that the King finally established the Board of Trade by commission, in order to prevent any necessity for encroachments by Parliament upon the recognized field of executive authority. The

Board of Trade was simply the vehicle through which the prerogative power was to be exercised. It was the home bureau, and its power was represented in the colonies by agents commissioned under its direction.

Under such a system it was within the power of the Board to shape the legitimate constitutional machinery of all the royal provinces. In theory, the only constitution such colonies had was contained in the commissions and instructions given to the several governors. As will be seen later, however, an unwritten constitution was developing in the provinces, different from, and contrary to that granted by the Board. By the year 1696 the instructions to the governors had already assumed almost a stereotyped form, yet, from time to time, new details were added and some of the old and obsolete ones omitted. In general these instructions provided for the same type of government; an elected assembly, a council appointed by the governor with the approval of the Board, and courts established by authority of the prerogative. All laws were to be passed by the assembly and council and receive the approval of the governor, after which they were to be transmitted to England for the approval or disapproval of the home government. A law once signed by the governor was legal until it was repealed by the authorities in England. The process of repeal is discussed later. The executive authority was in the hands of the governor and his council. In general the governors were instructed to secure certain desirable legislation and forbidden to pass certain other laws. Revenue was to be voted by both houses, but the expenditure of the funds once raised was vested in the governor and council. There

was also a fixed form prescribed for the wording of the laws granting money to the governor or lieutenant governor. Beside these general instructions given to the governors at the time of their appointment, the Board was accustomed to send out special instructions as such action was considered necessary.

The Earl of Bellomont was the first governor sent to New York under the new Board. His instructions and commission contain little that was novel, except the clauses relating to consolidation of the colonies . He was to be Governor of New York, of New Hampshire, and of Massachusetts Bay, and Captain General of the forces of those colonies and in addition those of Connecticut, Rhode Island and the the Jerseys. His commissions and instructions were made out in separate form to cover all of these various duties.

Endowed with more authority than any of his predecessors since the days of Andros, Bellomont entered upon his duties with the utmost vigor. A staunch Whig, he allied himself with the party that had supported Leisler and, consequently, found himself in conflict with both council and assembly. Both of these had been the ready tools of the unscrupulous Fletcher; because of the personal gain to themselves, they were far more interested in evading the trade laws and assisting the pirates, than they were in supporting the British trade policy. By the liberal exercise of his prerogative power to suspend members of the council and dissolve the assembly Bellomont was able to secure the support he needed in a financial way. But although the law making bodies were subservient to him, he encountered the greatest opposition. This opposition came chiefly from the commercial classes and the merchants, and was not long in finding

expression in England. The attacks, however, failed, and the Board supported the governor's vigorous policy. Notwithstanding his efficient support from England, Bellomont was unable to secure the collection of quit rents, suppress smuggling, or bring the pirates to justice without sending them to England for trial. With all his ability and power, he found how ineffective the prerogative is unless it is supported by legislation providing all the necessary forms and machinery of legal procedure.

The second governor, Lord Cornbury, was even less fortunate in his policy. Special instructions were sent out in 1703, forbidding governors to accept "presents" from the assemblies. Practice had demonstrated that as long as the policy of granting presents of money was allowed, it was impossible to maintain any efficient control over the governors. To advance their own selfish interests, they were too often willing to give their consent to forbidden legislation. Instead of accepting presents they were instructed to secure the grant of a permanent revenue of twelve hundred pounds per annum. Such were their directions, but it was often impossible to secure such a grant. In answer to Governor Hunter's statement that the Queen had directed him to secure such a salary, members of the Assembly replied that "if the Queen can appoint twelve hundred pounds she may appoint twelve thousand pounds."[1]. But the quarrels between the governor and the assembly over the question of salary is also treated elsewhere.

Cornbury was so extravagant that when the assembly levied special taxes for the support of troops necessary for the defence

1. Hunter to Lords of Trade, Nov. 14, 1710. N. Y. vol. V, 377.

of the frontier, it was not willing to entrust the expenditure of such funds to him. Consequently, it refused to observe the clauses in his instructions as to the expenditure of public money. The complaint of Cornbury to the Board tells the story.[1] He quotes from his instructions. "You are not to permit any clause whatever to be inserted into any law for levying money . . . whereby the same shall not be liable to be accounted for to us here in England." "You are not to suffer any public money whatsoever to be issued or disposed of otherwise than by warrant under your hand, by and with the consent of your council, but the assembly may view and examine the accounts." In spite of these very specific instructions, the Assembly insisted that the money should be expended by its own agents, denied the right of the council to amend a money bill; and forced the governor to give his consent, even though he knew he was acting contrary to his instructions.

There is little that is new in the instructions given to Governor Hunter.[2] The same clauses in regard to revenue that had been disregarded in the case of Cornbury were repeated. Bills were to treat of but a single subject. No bills of an extraordinary nature were to be allowed, and no tax was to be levied for a shorter time than a year. The governor was to see that a court of exchequer was established. The production of naval stores was to be encouraged, and the Royal African Company was protected in its slave trade. In addition the governor was to be more careful than his predecessors in the form of his reports, and very explicit directions in regard to this were given. Some of these reports were

1. Cornbury to the Boards of Trade, July 8, 1705. N. Y. IV.1145
2. Instructions to Governor Hunter, N.Y. vol. V, 125.

difficult to make, because the officers who furnished the data were lax in making reports to the governor. Especially was this true in regard to the data for vital statistics. It was the duty of the sheriffs to report all such facts to the governor; but as there was no effectual way provided to secure promptness and obedience, the sheriffs often refused to perform such duties. This neglect became so flagrant that Secretary Popple sent special orders to Governor Burnett in 1727, to see that these reports were made by the sheriffs.[1] The treasurer appointed by the assembly was also accustomed to ignore the governor's requests for accounts of the public money, on the ground that he was responsible only to the assembly. The failure of Governor Hunter to make these reports called forth an insistent letter from the Board in 1711.[2] The things he had failed to report were accounts of revenue, officers, procedure and fees of the courts, vital statistics, military condition and the most pressing needs of the province. Some of these are of almost purely commercial importance and were doubtless intended to serve the same purpose as our consular reports.

In 1720,[3] the Board of Trade was forced to take action in regard to bills of credit. Following the directions of the council, instructions[4] were sent to the governors directing them not to permit any laws creating such paper money to be passed, except where such measures were needed to meet the necessary charges of the government. The former practice of paying the officers by issues of paper money was forbidden, unless such laws received the sanction of

1. N. Y. Doc. vol. V, 816.
2. N. Y. Doc. vol. V, 382.
3. Order in Council, N. Y. Doc. vol. V, 706.
4. Ibid.

the Board. This was another instance of instructions that were difficult to carry out. Four years later the complaints of British merchants of the New York tariff of two per cent. on European goods caused the Board to send instructions to the governors covering this point. They were especially forbidden to give their assent to any similar legislation in the future on any pretense whatever.[1]. There was a way to enforce this requirement by repealing the laws that infringed it, yet this often involved a serious loss of revenue to the colonial government, as clauses levying such taxes were inserted in general revenue measures. In 1735, the Board sent special instructions to Governor Cosby on this point, requiring him to secure the modification of the revenue bill already passed, or the passage of a new one free from the objections. He was informed that no tax whatever would be allowed on British goods or on slaves imported by the African Company.[2].

The original instructions given Governor Montgomery and his successor, Cosby, included the points covered by the previous special instructions to other governors. In addition, they were forbidden to give their assent to repeals of laws without consent from the home government. They were also to see that delays in judicial proceedings were prevented, and were to make no grants of land that did not require a certain portion of the grant to be cultivated within a reasonable time.

In 1736, a new matter came to the attention of the Board of Trade. It appeared from certain letters of Governor Cosby that he

1. N. Y. Doc. vol. V, 706.
2. Additional Instructions to Governor Cosby, N. Y. VI,33.

had been accustomed to support his exercise of prerogative power by sitting with his council even when it sat as an upper house of the legislature. The result was that special instructions[1] were sent to him explaining the theory of the government and forbidding him to interfere with the legislative work of the council. Neither was he to expect any act to be presented to him for consideration until it had been passed by both assembly and council. This is one case where the Board interfered to prevent the governor from exercising an undue influence over legislation. The same instructions were made binding on the president of the council when he exercised the duties of governor. As acting governor he was to lose his position as president of the council when that body sat in its legislative capacity.

During the period from 1739 to 1748, there were no additional instructions sent out, and it is not until after the report of 1751 that the Board takes active steps to correct the disorders so prevalent in New York and some of the other colonies.

Special instructions were then sent to the governors of all the provinces directing them to send all communications to the Board.[2] In cases of emergency appeals could be made directly to the principal secretaries of state, but even in such cases the Board was to be informed of the situation. Former instructions required governors to correspond with both the Board and the secretaries of state. The result of this practice was that neither the State not the Plantation offices were fully informed of all colonial conditions. The evil had taken on a more acute form during

1. Secretary Popple to Governor Cosby, N. Y. Doc. VI, 40.
2. N. Y. Doc. VI, 754.

the preceding negligence of the Board. Governors, instead of corresponding with the Board, appealed directly to the secretaries of state, and thus the Board was not furnished with the information it needed to act intelligently.

At the same time the above change was made, the governors were directed to see that all the colonial laws were revised, and in the place of the existing mass of laws, they were to pass a complete and well digested body of new laws.[1]. In the passage of these new laws, all the regulations included in the instructions were to be observed. These laws were not to be made binding until they had been ratified by the Board, and were to be transmitted as soon as possible. This was followed in a few weeks by special admonitions as to the passage of future laws. Governors were "to adhere strictly to their instructions and not to allow deviations from them in any point, but upon the most evident necessity, and justified by the particular circumstances of the case."[2]. In cases where they were compelled to deviate from their instructions they were to report the case at once and if possible to secure permission in advance. They were also asked to examine their instructions and to report any points in which they considered such instructions needed revision.

In 1757 Governor Clinton gave place to Governor Osborn. His instructions[3]. include the main provisions of preceding general and special instructions. Some additional points, however, were emphasized. Appointments of all judicial officers were only to be made with the concurrence of the council and could be made for a

1. N. Y. Doc. VI, 755.
2. Board of Trade to the Governors, June, 1753. N. Y. VI,760.
3. Instructions to Governor Osborn. N. Y. Doc. VI, 780.

limited time. Specific Acts of Trade were mentioned which he was to have enforced. The most important clauses were in regard to a fixed revenue. These were written with the evident purpose of intimidating the assembly. He was "to signify to the members in the most solemn manner, the King's high displeasure for their contempt of his commission."[1]. The instructions went on to recite how "government had been subverted, justice obstructed, the prerogative usurped; that the delegates, forgetful of their allegiance, had not only refused to comply with the governor's commission, but in violation thereof have assumed the disposal of money, the nomination of public officers and the direction of the militia."[2]. He was therefore directed to charge them to recede from their position, and to grant a permanent revenue.[3]. He was also to remove every councellor who should again concur with the delegates in such "unwarrantable measures."[4]. The assembly, however, insisted on its yearly grants in the face of such positive instructions. The death of Osborn left the government in the hands of Delacey, the man who had been most active in the encroachments upon the governor's prerogative, and the incident ended with the disregard of the orders of the Board.

II.

Justice.

When the Board of Trade was created, New York already had a

1. Chalmers, Int. to the Hist. of the Revolt in the Colonies, II, 315.
2. Chalmers, Int. to the Revolt in the Colonies, II, 315.
3. Ibid.
4. Ibid.

system of judicial procedure, as follows. The justices of the peace determined causes of small value. Above them were county courts, from which appeals could be made to the supreme court. This court consisted of five judges commissioned by the governor. From this again appeals could be made to the governor and council and in controversies involving sums of more than three hundred pounds to the King in Council.[1].

When Governor Bellomont arrived in the colony and commenced his vigorous exercise of authority, he found himself hampered by the absence of efficient attorneys and judges. Thus he says in his letter to the Board in May, 1699, that he cannot execute the order to prosecute Baldridge and others for piracy for lack of a good judge and an active attorney general.[2]. Again he complains of the absence of effective courts of justice and adds that, while his commission gives him full power to establish courts, Colonel Smith, the chief judge, and Mr. Graham, the attorney general, are of a contrary opinion. They held that the King had no power to establish courts by virtue of his own authority, but that such establishment should be regulated by laws passed by the assembly.[3]. The Board, however, believed and acted on the other principle. It was supported in this attitude by the crown lawyers. Even as late as 1725, Mr. West, the attorney for the Board observed in regard to a Massachusetts law creating courts for the county of Hampshire, "erecting courts was a prerogative of the crown and the act could not be valid

1. Proceedings of the Board of Trade, Sept. 12, 1696, N. Y. Doc. IV, 185.
2. N. Y. Doc. IV, 518.
3. Bellomont to the Board of Trade, N. Y. Doc. IV, 515.

except as it was conformable to the charter of Massachusetts."[1].

The Board of Trade concurred in the opinion of Bellomont that the only way to secure the enforcement of the revenue laws and the laws against piracy was to have a good judge and an active attorney. They recommended that the King send out two such men, the one to be chief justice and the other to be attorney general. They also recommended that these men constitute a court of admiralty for New York and the neighboring colonies.[2]. The men were appointed and commissioned, William Atwood as chief justice and Sampson Broughton as attorney general. When they arrived in the colony a court of chancery was established by act of the governor and council, and the men entered upon their duties. On Account of party strife, Governor Cornbury, soon after his arrival in the colony, suspended the attorney general. The Board of Trade investigated the charges against him and decided that Broughton had been suspended without due cause.[3]. An order was entered restoring him to his office, and Cornbury had no choice but to observe it. It was not long until Atwood was also suspended[4]. by the governor, and a successor appointed. This appears to be the only case of judicial officers being sent to the colony by the Board. In fact it was held by that body in 1705 that it was not necessary for them to send a commission to Mompesson whom Cornbury had just appointed as chief justice, as by governor's commission "he was already chief justice."[5].

Under Cornbury's government the court of chancery seems to have

1. Mass. Laws.
2. N. Y. Doc. IV, 595.
3. Board of Trade to Cornbury, N. Y. Doc. IV, 963.
4. Cornbury, to the Board of trade, Ibid, 1012.
5. Board of Trade to Cornbury, Ibid, 1159.

been abandoned, for when Hunter, in obedience to his instructions, reopened the court there was a protest from the assembly. That body, by resolution, declared the erecting of such courts without its consent was "against law, without precedent and dangerous to the liberties of the colonists."[1]. The assembly took similar action in regard to the table of fees to be charged by officers of the law published by the governor.[2]. The controversy was carried to the Board. There the prerogative, as exercised by Hunter, was upheld. Governor Montgomery encountered the same opposition to the operation of this court. He appealed to the Board, and was directed to continue to hold such courts when necessary, just as his predecessors had done.[3]. Apparently, however, he did not follow this instruction, because of the opposition of the assembly. President Van Dorn, on the death of Montgomery, acted as chief executive until the new governor arrived. He, too, refused to hold the court of chancery, and would not even take the oath as chancellor. The Board notified him of the complaints on these points and advised him to hold the court,[4]. but without result.

Cosby followed his instructions and reestablished the court. Under his direction, and in obedience to instructions from the Board, the attorney general brought suit in this court to break the title to certain extravagant grants of land made by Montgomery. The persons summoned entered protest against the validity of the court.[5].

1. Cornbury to the Board of Trade, Jan., 1712, N. Y. Doc. V, 298.
2. Ibid.
3. Board of Trade to Montgomery, N. Y. Doc. V, 976.
4. Board of Trade to President Van Dorn, N. Y. Doc. V, 930.
5. Governor Cosby to the Board of Trade, N. Y. Doc. VI, 30.

Cosby refused to allow any such arguments and appealed to the Board for support. The Board assured him that the court was legally established, and directed him to adhere to his instructions and hold the court whenever there was need for it.[1]. The real objection to this court seems to have been the fact that it was made the instrument for the collection of quit rents, although the manner of its erection was selected as the point of attack. In the later administration the nature of this court does not appear to have been a cause of serious dispute, at least it disappears from the correspondence between the governor and the Board.

The control and the erection of admiralty courts was not one of the duties of the Board, that business being transacted by the admiralty officials. The question of their action appears only occasionally. In one of Cornbury's letters to the Board[2]. he mentions the establishment of the court by commission from the admiralty and the various judges who had exercised such authority. Again such courts are mentioned in the case of one, Budge, whose ship had been confiscated by the court in New York, but restored to him on appeal. When letters showing this to be the case were presented to Cornbury he refused restitution. The Board censured him for such action, ordered him to make reparation, and soon afterward recalled him. Similar losses on the part of those who appealed caused the Board to direct Burnet that execution was to be stayed in cases of appeal, unless sufficient bond was given to cover possible loss to the appellant.[3].

1. Board of Trade to Governor Cosby, N. Y. Doc. VI, 36.
2. N. Y. Doc. IV, 1000.
3. N. Y. Doc. V, 816.

In doubtful cases of appeal, the case first went to the Board, and it was then usually referred to the King in Council with recommendations, as in the case of Colonel Bayard who had been convicted on the charge of treason.[1]. If a judge, or other officer, was removed by the governors the Board usually investigated the conditions; and if there was not sufficient cause for removal, the governor was ordered to reinstate the officer.[2]. In the charter and proprietary colonies the question of appeals was of considerable importance. In its report of 1701, the Board urged the refusal of appeals as a ground for suppressing all charters.[3]. In one of its letters to Bellomont the Board said, "the denials of appeals is a humor which prevails so much in proprietary and charter plantations, and the independency they thirst after is now so notorious that it had been thought fit those considerations should be laid before Parliament."[4]. Even in the case of the royal province of Virginia, the Board disallowed an act of the assembly establishing a general court, on the ground that it did not protect "the undoubted right of the crown to receive appeals."[5].

Besides safeguarding appeals the Board exercised little influence upon the ordinary forms of judicial procedure, and when it did interfere it was usually in the interests of justice and regularity. Thus when Governor Bellomont, in the case of an appeal to him in council, reversed a decision of Governor Fletcher, the Board forbade him to reverse decisions of his predecessors. This seems to be the

1. N. Y. Doc. IV, 962.
2. Case of Attorney General Broughton, Supra.
3. Chalmers, Int. to the Revolt in the Colonies, I, 303.
4. Ibid, I, 304.
5. Ibid, 318.

only case in which the governor was guilty of a similar abuse of his authority.

III.

Repeal of Colonial Laws

It has already been indicated that one of the methods of controlling the action of colonial governments was the disallowance of their legislature acts. The real work of disallowance was done by the Board. The history of a law before it was allowed, or disallowed, was as follows. The acts were, or should have been, transmitted regularly to the Board. They were read in Board meeting and if nothing was noted as endangering the trade interests of England or the prerogative they were submitted to the legal authorities for more careful examination. During the earlier years of the Board this legal work was done by the Attorney General, but after 1720, there was a crown attorney attached to the Board to do this work. He examined the laws with especial reference to whether they conflicted with the laws of England. With his endorsements and opinions they were returned to the Board. In the meantime, if some law affected trade in any way, the merchants were likely to complain to the Board. If such complaints occurred, witnesses were usually called, and the agent of the colony was asked to attend and defend the act. After the evidence was in and the attorney had given his legal opinion, the Board decided whether the acts should be allowed or disallowed. In either case they were presented to the Privy Council with the recommendations of the Board. The action of the Council was usually only a formality, and very seldom did it

fail to endorse the recommendations of the Board.

In general the Board disallowed those acts that were in violation of the instructions of the governor, although much of the financial legislation by the assembly was an exception to this rule. Certain kinds of laws were forbidden by the Board. Usually these were of a nature that affected trade, and if they did they were disallowed without much ceremony. Acts once disallowed were not allowed to reenacted without special permission. Another class of laws that were disallowed, whenever such action was practicable, were those that encroached upon the prerogative. A good illustration of a law of this kind is the triennial bill of New York. This was disallowed in spite of the attempts of Lieutenant Governor Clark to have it approved.[1]. The reason given in this case was that the law was a direct infringement of the prerogative, "by taking away the undoubted right which the crown has always exercised of calling and continuing the assembly of this colony"[2]. whenever it was thought necessary for the public good.

The promptness with which laws were disallowed varied very greatly, but depends on the general activity of the Board. During the periods of inefficiency only the acts of an extraordinary nature were passed upon, such as the triennial bill; but in the periods of greatest activity the laws were examined promptly and carefully. The two lawyers who served the Board during the greater portion of the period covered by this paper were Mr. West and later Mr. Fane.

In the case of the charter and proprietary colonies it was dif-

1. N. Y. Doc. VI, 130.
2. Ibid, 129.

ficult to secure a prompt transmission of the acts. In 1714 the Board reported "that, since neither Carolina, Maryland, Connecticut or Rhode Island were obliged to submit their laws to royal revision", Parliament should pass an act compelling them to do so.[1]. In 1731 it reported in regard to the last three, that since they were not compelled to give any accounts of their proceedings, "it is not surprising that governments constituted like these should be guilty of many irregularities."[2]. The Board complained that Pennsylvania had submitted no acts of her assembly since 1715, with one or two exceptions, and the same complaint regarding this colony was repeated in 1739. Even in the royal provinces it was sometimes difficult to secure a prompt report of the laws, and the main correspondence of the Board with New York during the years 1739-1748 was to secure the transmission of laws and other required reports.

Although the power of the Board to secure the repeal of laws failed to protect against the encroachment of the assemblies upon the prerogative, it was sufficient to control the tariff policy of the colonies. New York was especially favorable to indirect methods of taxation. A tax on imports was one of the most available sources of revenue. As the greater portion of the imports were necessarily from England the attempt was made to lay a special tariff duty of two and one half per cent. on such goods. The British merchants complained and notwithstanding the arguments of Governor Hunter in favor of the law, it was repealed and similar legislation forbidden. Thus the colonies were practically excluded from using the most

1. Chalmers, Int. to the Revolt, II, 5.
2. Ibid, 118.

feasible method of indirect taxation. Similar action was taken in regard to the tax levied by both New York and Virginia upon slaves imported into the colony. Virginia was able to avoid the regulation, while accomplishing the same result, by providing that the tax should be paid by the purchases and not in the first instance by the importer. The whole subject of repealing laws, however, caused much inconvenience to the colonial government, and increased the desire to be free from this irritating control.1.

IV.

Revenue and its Expenditure.

The fundamental weakness in the system of colonial control adopted by the Board of Trade, was the absence of a certain source of revenue for the support of the administration. Governor Bellomont and his successor, Cornbury, were able, by an adroit manipulation of the elections, to secure a satisfactory settlement of the revenue. During their administrations the system established by the instructions given by the Board was in operation. The assembly voted the taxes and the money arising was paid out under direction of the governor and council. All colonial revenues were entrusted to the receiver general of the colony. He, in turn, was responsible to the Auditor General in England. His reports were made to the latter officer and to the governor and council. He need not report to the assembly unless directed to do so by some one of his superior officers. In 1706, however, the Board advised Cornbury to account to

1. Robert Quary to the Board of Trade, N. Y. Doc. V, 19.

the assembly for all of his expenditures,[1] but apparently he did not heed the advice.

As a result of the War of the Spanish Succession, New York was compelled to incur heavy expenses to protect her frontier. This meant increased taxation. Cornbury had been extravagant, and the receiver general had refused to report to the assembly the taxes already collected and expended. As a result, the assembly insisted on naming its own treasurer and making him responsible only to that body. The first bill was vetoed and the assembly dissolved; in 1705 the delegates insisted on a more radical measure.[2] They proposed to raise seventeen hundred pounds for purposes of defense, the money to be placed in the hands of a treasurer of their own appointment, and to be paid by him to the officers of the militia, they giving him receipts. The bill also laid heavy penalties on any one who, under color of any commission or authority whatever, should attempt to divert or misapply the funds voted. Cornbury read his instructions to his council and that body sought to have the bill so amended as not to conflict with the orders of the Board. The assembly then denied the right of the council to amend a money bill.[3] Cornbury appealed to the Board, and that body, while objecting to certain clauses in the bill, advised him that it was perfectly proper for the assembly to appoint its own treasurer in case money was raised for extraordinary purposes.[4] The pretensions of the assembly to have exclusive control of money bills was denied by the Board, and

1. N. Y. Doc. IV, 1171.
2. Ibid, 1145.
3. Ibid, 1146.
4. Ibid, 1171.

the coordinate power of council and assembly in all legislation maintained. The assembly, however, had carried its point and taken the control of certain expenditures out of the hands of the governor.

All of the governors had specific instructions from the Board to secure a fixed revenue. Governor Hunter struggled for years to secure this, but the assembly refused to raise money unless it was allowed to do it in its own way. His attempt to secure sufficient revenue by a collection of quit rents failed.[1] Finally in 1715, the assembly granted him a revenue for five years in return for his signing a general naturalization bill; but even then, the money was to be lodged with the treasurer chosen by the assembly and not with the receiver general of the province. The power to choose its own treasurer, having once been gained by the assembly, was retained. Governor Burnet insisted on a return to the method required by his instructions, but the assembly was obstinate. Horatio Walpole was Auditor General of the revenue. He was entitled to five per cent. of all the money that passed through the hands of the receiver general in the colonies. Burnet's failure to restore the authority of the receiver general in New York, caused him to incur the enemity of the Auditor General.[1] As Burnet was only a sattellite of the latter politician, he was soon recalled. Thus the governors were pressed between two forces. The Board on one side insisted on a system of expending money that would make the officers responsible to the home government, on the other side the assembly enforced a plan that made

1. N. Y. Doc. V, 356.
2. Chalmers. Int. to the Revolt, II, 53.

all revenue officers responsible only to itself. The assembly, after Governor Montgomery's administration, also refused to grant any support to the government for a longer period than one year; but there was a struggle with every new governor over this point.

Besides securing the power to select its own treasurer, the assembly was also able to take away from the governor and council the power to expend the public funds. This was an adroit way of using the instructions of the Board on one point to evade those on another. The Board admitted the right of the assembly to appropriate money, but insisted that the disposal of the money after it was appropriated was the duty of the governor and his council. It was only necessary for the assembly to specify the exact purposes for which money was appropriated to secure full control of expenditures. This was the plan adopted. The encroachments were gradual, at first only the expenditures for military and other unusual purposes were specifically regulated in the appropriation bill. The regular expenses of the government were still provided for according to the instructions of the Board. Then some of the regular salaries were specified in the bill. Next a list of all the regular officers and the salaries they should draw was included. Finally after 1739, the salary for each office and the men who were to draw the salaries were fixed in the yearly appropriation bill.[1] In cases of extraordinary expenditure the assembly clung to the plan of making payments by receipt and not by warrant. The struggle was renewed at the outbreak of the French and Indian War. The assembly insisted on its own method of supporting the troops. The necessities of the case were

1. N. Y. Col. Stat.

too great to permit the governor and his council or the Board to refuse votes of money because of the method by which it was to be accounted for.

Within certain bounds the Board left the assembly free to raise its revenue by whatever taxes it saw fit to impose. The Board did refuse to allow any tariff duty to be laid on slaves or on criminals imported from England. It also steadfastly refused, after 1718, to allow any import duties on European goods, at least such a duty as would affect the trade of British merchants. Before this date, such a duty was a part of the colonial system of taxation. The resort to forced loans in the form of bills of credit was a favorite device of colonial legislators for meeting unusual demands for revenue. Such issues were opposed by the Board, but they could not always be prevented. The whole question of paper money and of providing money for its retirement caused considerable friction between the Board and the colonial government, but usually the assembly found means of evading the orders of the Board when it was determined to have more money of this character.

The problems of revenue in other colonies were similar to those in New York, and they were finally adjusted in practically the same way. Nearly all of them finally adopted the plan of paying the governor and other officers by yearly grants instead of by a fixed revenue. The governors could not accept these yearly grants, because they were in violation of instructions. Permission was granted year after year. In 1735 the Board recommended that Governor Belcher of Massachusetts be given a general license to pass the annual bill for such allowance as the assembly saw fit to give

him.[1]. In North Carolina the governor, in 1732,[2]. was assigned a fixed salary by the Board from the quit rents, but the regulation of the quit rents was left in the hands of the assembly. The result was the governor was compelled to submit to the annual grant after a struggle lasting a few years. Other colonies regulated extraordinary expenditures as did New York. In 1741, Belcher was unable to prevent the assembly from placing the expenditure of money in the hands of the speaker and a committee of the house.[3]. Thus by the middle of the century, the Board had lost almost all control over the manner of collection and expenditure of colonial revenues; although it could and still did prevent a tax from being laid on British commerce.

1. Chalmer's, Introd. to the Revolt in the Colonies, II, 139.
2. Ibid, 166.
3. Ibid, 140.

CHAPTER III.

Trade, Defense, and Intercolonial Relations.

In the preceeding chapter we discussed questions of an administrative nature within the individual colonies. The Board had to face other problems of colonial empire. These in the main were questions of the inter-relation of different parts of the colonial system, and involved the external relations of each colony. Some of the more important of these problems concerned trade relations; enforcement of the trade and the navigation laws; defense; Indian relations; disputes over boundaries; and most important of all, the formation of some form of central government.

I.

Trade Relations.

A large part of the Board's duties was to protect the interests of British merchants and manufacturers. To do this, they required careful reports of trade conditions from the royal governors and from the surveyor general of customs. All industries that might become harmful to similar industries in England were especially watched for, but in most cases the Board made little effort to have such industries suppressed. In New York there was very little manufacturing of goods for other than private consumption. In Massachusetts, however, the manufactures were of growing importance. Knowing the attitude of the British government, the people of that colo-

ny became extremely jealous of commercial reports. In 1733-4 the Board reported, "we cannot conceal the difficulty of procuring information of the commercial affairs of New England, which will not appear extraordinary when we acquaint your lordship that the assembly of Massachusetts had the boldness to summon Mr. Jeremiah Dunbar before them and pass a vote of severe censure upon him for having given evidence before the House of Commons with regard to their trade and manufactures."[1].

The ship building industry attracted the attention of the Board. In one of its reports it showed how rapidly the industry was increasing because of splendid natural advantages and the cheapness of raw materials in the colonies. It proposed as a remedy a preferential tax of five shillings per ton on all colonial built vessels used in the foreign trade of Great Britain.[2]. The preservation of the native timber suitable for ship building also attracted considerable attention. Instructions were repeatedly sent to the governors to see that such forests were preserved. But as long as it was of interest to the settlers to cut such timber for the foreign trade, it was impossible to carry out such instructions.

England was accustomed to buy much of her naval stores from foreign nations. It was a favorite scheme of the economists and statesmen of the first half of the eighteenth century to have all of these necessary stores produced in the colonies. In that way the British nation would become more independent. Governor Bellomont was a strong advocate of the idea, and in his correspondence he sent glowing accounts of the possibilities of establishing such indus-

1. Chalmer's Int. to the Revolt, II, 123.
2. Ibid, 34.

tries in New York. In thus interesting himself in the resources of the province he was but following the instructions given him by the Board. His pet idea was to have soldiers produce tar from the almost limitless pine forests along the Hudson. In this way, the province could be defended and the government secure a profit from the tar produced. The idea was not entirely acceptable to the Board. One objection was that it would require the presence of more troops that the military situation in Europe warranted sending so far away. While trying to induce the Board to have the government embark in the production of rosin, tar and other naval stores, he tried to prevent the export of ship timbers to foreign countries.[1]. He actually refused to allow some ships so freighted to leave port and reported his action to the Board. That body had no authority to take any such arbitrary action, so Bellomont had to withdraw his embargo.[2].

The Board finally found an opportunity to test the project of government manufacture of naval stores. When in 1708 three thousand Germans from the Palatine asked for homes in America, the Board requested that they be settled in New York and engaged in the production of naval stores. In this way they could be prevented from engaging in their regular occupation of wool manufacture. The scheme was adopted. The Palatines came over under contract to work in the pine forests, and not to engage in woolen manufacture. The government engaged to bear the charges of transportation, support them until profits could be secured from the new industry, and

1. N. Y. Doc. IV, 678.
2. Ibid, 773.

finally to give each of them a tract of land.[1]. Manufacturing tar was a new industry, and the results were far from satisfactory. Thousands of pounds sterling were expended in the enterprise and no tar or rosin secured. In short, the whole scheme was a failure. After this venture, the Board made no further attempts to engage the government in similar commercial enterprises, but it did all it could to encourage, indirectly, the production of naval stores.

At the time the Board was organized the trade laws were but laxly enforced and piracy was a notorious evil. The colonial governors, especially Fletcher of New York, were in collusion with both these evils. The Board made it its business to enforce the laws of trade and stamp out piracy as far as possible. The two evils were really closely allied. The pirates depended on an illegal trade to the West Indies to give them a chance to dispose of the rich Indian goods captured with their prizes. Thus the illegal traffic and the work of the pirates aided each other.

Governor Bellomont was given the strictest instructions to ferret out the pirates and bring them to justice, and he did his best to carry out his instructions. In 1699, all pirates were ordered sent to England for trial; and on the failure of some of the New England provinces to make provision for the execution of the order, Parliment the next year passed a general act for stamping out the evil. The Board in announcing the fact to Bellomont said, "New England may preceive that when the public good does suffer by their obstinacy, the proper remedy will be found here."[2].

It was a more difficult problem to enforce the trade laws,

1. N. Y. Doc. V, 117.
2. Chalmer's Int. to the Revolt, I, 279.

especially as both New York and New England merchants profited by evading them, and it was on the support of these merchants that the government had to rely. Bellomont reported that, "the observance of the laws was so great a novelty that it gave as great discontent as if it had been an infringement of their charter."[1]. In New York he found the officers corrupt. Some of them refused to enforce the navigation laws. His orders to make seizures were not obeyed on the ground that such duties did not belong to the collector.[2]. The whole subject was a most irritating one at New York, and Bellomont by his energy made himself very unpopular. Mr. Randolph, the surveyor general for the provinces reported that in Pennsylvania, Governor Markham was doing nothing to enforce the trade laws, but on the contrary he was abetting their violation. Randolph administered the oath to him as he was directed.[3].

Some of the means taken by the Board to enforce the trade laws were to require the officers to take the prescribed oaths; in some cases, new judicial officers were sent over; the collectors of customs were required to attend more strictly to their duties; and posts difficult to control were not opened to trade. In the main, however, the Board was compelled to depend upon the energy of the governor to see that the laws were enforced. The work really belongs to the admiralty and it was only indirectly that the Board was responsible. The efficiency of the admiralty in the colonies, however, depended very largely upon the efficiency of the administrative officers under the control of the Board.

1. Edgerton, British Colonial Policy, 122.
2. N. Y. Doc. IV, 303.
3. Ibid, 301.

Amboy in New Jersey was one of the ports Bellomont urged should not be opened. Besides competing with New York it would furnish a base for much illegal traffic. In the words of Attorney General Graham, "it will become a Nursery to all the unlawful trade in America, because the people there prefer their private gain to the general good of the nation of England, while New York has force to suppress unlawful trade."[1]. The Board accepted Bellomont's argument and refused to open the port. The force for the suppression of violations, however, was very largely a fiction, for Bellomont wrote in November, 1700, that "fully a third part of the trade of Boston and of this place is directly against law",[2]. and appealed to the Board to see that the collectors were not absent from their posts so much of their time. This specific complaint against the collectors is not repeated in later years. Probably the Board saw that such officers stayed more closely to their posts.

During Queen Anne's War it was necessary to prevent the colonists from trading with the French in Canada. As this was a very profitable trade it was difficult to control. As evidence of violations came to the Board it was communicated to the governors. Thus Governor Hunter was informed of an illegal trade to Curacoa and St. Thomas by New York merchants, by means of which the French were supplied.[3]. The plan was to give the captain a fictitious bill of sale so that the vessel would appear to be English owned. We are not informed whether or not Hunter succeeded in stopping this trade; but whether he did or not, it illustrated the method of the Board in

1. N. Y. Doc. IV, 382.
2. Ibid, 775.
3. Ibid, V, 159.

such matters. In 1721 Hunter appeared before the Board and was asked what methods were used to prevent illegal trade. He answered that when such trade was discovered, seizure and confiscation followed; but that the officers had been frightened by appeals to the admiralty in England, by which they had been great sufferers.[1]. It was his opinion that because of appeals the officers were likely not to be so exact in performing their duties in the future. This brings up another important point.

The great reason for the failure of the revenue officers to enforce the navigation laws, was the difficulty of securing convictions when violations were discovered. The following quotation from one of Lieutenant Governor Clark's letters to the Board, in 1739, in reference to a case that the collector of customs was certain he would have to appeal illustrates the situation. He says, "If some method be not fallen upon whereby illicit traffic may be better prevented, I doubt it will be to little purpose to bring any cause before a jury, and the officers of the customs will be discouraged from exerting themselves in discharge of their duty, as unlawful traders are by much too many."[2]. The Board had no remedy to offer and the officers could only continue trying to secure convictions from juries who were more interested in the illicit trade than in enforcing a law they disliked. If there was to be any remedy it would have to be brought about by action of Parliament. The conditions were too serious to yield to the impotent instructions of the Board.

The difficulty of enforcing the trade laws was much greater in

1. N. Y. Doc. V, 556.
2. Ibid, VI, 154.

the charter and proprietary colonies than in the royal provinces. The fact that colonies like Connecticut and Rhode Island were not compelled to transmit their laws, made it much easier for the trade laws to be evaded. Rhode Island was especially complained of as an offender in this respect. The complaints were so great in 1698, that Bellomont was commissioned to investigate conditions there.[1]. Charges of similar disregard of the trade laws brought on another investigation in 1705-6.[2]. To remedy these evils that it had no power to check, the Board proposed the taking away of all charters and the establishment of royal governments in their stead. Again in 1721, the Board made similar recommendations, as the proprietary and charter governments "had broken through the laws of trade and navigation; made laws of their own contrary to those of Great Britain; given shelter to pirates and outlaws; and refused to contribute to the defence of neighboring provinces."[3]. Parliament, however, was not ready to reduce all the colonies to the royal type, so the evils continued to accumulate.

There was one more matter of great interest to the merchants, that was the regulation of currency in the provinces. There was a real scarcity of money in all the colonies, and what they had was not of any one system of coinage. Thus there was every temptation to regulate the value of coin. In New York the assembly passed such a law in 1708 but it was promptly disallowed by the Board, because it changed the value of the current coin and would be a bad example for other colonies.[4]. In Massachusetts, however, bills of credit

1. Chalmer's Int. to the Revolt, I, 286.
2. Ibid, 339.
3. N. Y. Doc. V, 627.
4. Ibid, 67.

were issued in 1690, to pay for the expedition against Quebec.[1]. New York followed her example and issued bills of credit to pay for the unsuccessful expedition against Montreal. The bills once issued were continued and even increased from time to time.

It was very natural that merchants should complain of the existence of this paper money in constantly growning amounts. The Board did what it could to check the evil. Governors were instructed not to allow acts creating bills of credit, unless these issues were necessary to meet the most pressing needs of the government. The assembly was able to avoid this regulation, and compel the governor to sign the acts and even secured his active support by granting him a revenue for some years in the same act. But the insistence of the Board that new issues should cease, seems to have been effectual after 1735. As often as the conditions would permit, the Board had all acts creating such bills of credit disallowed. And in those cases when such a policy was possible, tried to have provision made for the retirement of the bills.[2]. But as its real power was limited to instructions and to the disallowance of acts, its policy was not very effective.

The real remedy for the evil does not seem to have been seriously proposed by the Board. The colonists had to have money of some kind, so each colony made its own. The real remedy was to establish a mint and a central bank for the colonies. Probably the colonists would have welcomed the mint. The proposition was not new. Penn had made it in his testimony before the Board in 1700. His plan

1. Chalmer's Int. to the Revolt, I, 230.
2. Case of New Jersey, N. Y. Doc. V, 933.

did not contemplate a mint for all denominations of money, but only for small silver coins. Even that would have met many of the difficulties of the trade situation. The reason there was no general regulation of currency matters was doubtless due to the attempt of the Board to deal with each colony individually, instead of all as a body. General regulations required action by Parliament. That was a power that the statesmen of the period were slow to invoke for the solution of any question of internal colonial control; although it was used in some cases, as in the paper money act of 1751.

II.

Defense and Intercolonial Relations.

The Board inherited its Indian policy just as it did the leading features of its policy in other matters. As far as New York was concerned the friendship of the Five Nations was necessary to the safety of the settlements. The actual work of negotiating with the Indians was in the hands of the commissioners for Indian affairs, but the Board was consulted as regards the general policy.

The Indians were bribed by presents to support the English cause. During King William's War the agents for New York asked that presents be sent over yearly for this purpose.[1]. The Board seems to have acted upon this policy, but in after years presents were sent from England only when a new governor came over or when there was a change in sovereigns in England. If other presents were necessary they were supplied by the colony. Another means of se-

1. N. Y. Doc. IV, 254.

curing the support of the Indians was by building forts on the frontier, as at Albany.[1]. These forts were in part built by funds secured in England through the influence of the Board. Four companies of regular soldiers were maintained in New York, and the Board undertook the task of keeping these companies full and of securing their support by the home government.

The temptation to desert was so strong that the companies could not be kept full. Their supplies were often delayed for months and sometimes their pay was two years in arrears.[2]. Wages in the colonies were high, and good men were always in demand; thus deserters from the forces in one colony were welcomed in the neighboring colonies. To remedy this condition the Board in 1697 agreed to instruct all the governors to secure the passage of suitable laws against desertion.[3]. Governor Fletcher was also instructed to fill the companies by enlistment if he could do so. This plan, however, was not very successful; for if the soldiers sent over found it to their pecuniary interests to desert, able-bodied men in the colonies could not be expected to enlist unless great inducements were offered. In Bellomont's time the ranks were filled by sending over recruits, indicating the failure of the other plan.

The Indians were to be secured only as a barrier against the French, and the whole question of meeting the encroachments of the latter was constantly before the Board. The boundary between the settlements of the two nations had never been determined and there was little prospect that it would be. In 1722 the Board instructed Burnet "to extend with caution the English settlements as far as

1. N. Y. Doc. IV, 641.
2. Ibid, 451.
3. Ibid, 255.

possible, since there was no great probability of obtaining the determination of a general boundary."[1]. As a result, the fort at Oswego was built and garrisoned. This fort was to fulfill two objects, check the French and insure the support of the Five Nations. Oswego was held by the English until the desertion of the garrison in 1753. The French in the meantime were also encroaching. The Board in 1727, wrote Newcastle that the French were violating the treaty of Utrecht by building the fort at Niagara, and asked him to insist that they abandon that post.[2]. The French were insisting that Governor Burnet abandon Oswego, but instructed by the Board he refused to comply. Thus the controversy went on.

In the case of charter and proprietary colonies, the control of the general policy of the plans for defense were not so largely controlled by the Board. Pennsylvania, for instance, took no active steps to defend its frontiers as the war of 1744-48 was approaching. In 1742 the Board reported "that the proprietary was no more obliged to defend the province than any other provincial ruler; and since there were no laws for military purposes, the governor should be instructed to lay before the King a state of what he deemed necessary for individual satisfaction and public protection."[3]. The very fact that the officers of such colonies as Pennsylvania were not responsible to the Board, rendered any effective direction of their policy impossible.

Another scheme of defense attempted by the Board was to levy quotas of men and money on the various colonies. In its report in

1. Chalmer's Int. to the Revolt, II, 52.
2. N. Y. Doc. V, 815.
3. Chalmer's Int. to the Revolt, II, 209.

1696 the Board said, "His Majesty has subjects enough in those parts of America, not only to defend themselves against all the attacks they may apprehend from the French in Canada and the Indians joined with them, but even to drive them from thence."

It is almost incredible that His Majesty's governor of New York in the midst of forty-one thousand English, that he has in his neighborhood, should say as he does that he has but the four companies His Majesty sent-- to rely upon for the defense of that frontier."[1]. The Board was of the opinion that the colonies should defend themselves and proposed that each colony should be called upon to furnish its proportionate share of a force of two thousand men. Another part of the plan was to send out a captain general with power to command the forces of all the surrounding provinces. This last part of the plan was carried out and Bellomont was sent over with the powers of a captain general. Again in 1700, the Board recommended that the same quotas of men should be called for, and that in addition each colony should be asked to contribute its proportion of five thousand pounds.[2]. All of this supply of men and money was to be used for the defense of New York. In 1701 the request for thirteen hundred and fifty men and three thousand pounds in money were sent out. The governors laid the requests before their assemblies. All gave practically the same answer. The assemblies decided that they could not raise the money nor could they safely spare the men.[3]. Thus the plan of the Board to use the resources of the colonies, by simply requisitioning whatever men or

1. N. Y. Doc. IV, 227.
2. Ibid, 705.
3. Ibid, 921.

money they deemed necessary, failed. Although, as the Board argued, the colonies were fully capable of defending themselves they refused to allow levies to be made upon them; and in many instances refused to assist other colonies who were forced to bear a disproportionate share of the assaults of the enemy.

The trouble over quotas was old enough to engage serious attention. The evident remedy was some form of union by which concerted action could be secured. William Penn proposed, in his testimony before the Board in 1696,[1] that there should be some form of general assembly of all the colonies. Even Massachusetts had proposed a union. Her plan was that whoever was governor of Massachusetts should also be appointed civil governor of New York and of New Hampshire, and general of all the forces of these colonies and also those of Connecticut, Rhode Island and the Jerseys. Connecticut objected to the plan on the ground that even the imposing of a military governor would be contrary to her charter.[2] New York had several objections, the chief of which were based on the fact that the governor was to reside in Boston. The real animus back of this objection was admitted to be the trade rivalry between the two cities. The only feasible plan of union the Board could suggest was a union essentially like that proposed by Massachusetts. The same man was to be commissioned as governor of New York, Massachusetts and New Hampshire, and was to be given supreme military command in all three. He was to reside in New York with permission to visit Boston, and was to be allowed a deputy in each of the colonies.[3] Thus there

1. N. Y. Doc. IV, 246.
2. Ibid, 259.
3. Ibid.

was to be union, but union only of the executive part of the colonial governments. Within less than a month this plan was put in execution by commissioning Bellomont as governor of each of the three provinces, and captain general of the forces in those provinces, and also those of Rhode Island, Connecticut and New Jersey.

Bellomont's successors were given no such wide powers as himself. The Board, in 1721, again advocated a union. It is best expressed in their own words. "The most effectual means, . . . of making the colonies subservient to each others support, will be to put the whole under the government of one Lord Lieutenant, or Captain General, from whom all the other governors are to receive their orders, and the Captain General to have full control in the colony where he resides at any time."[1]. The "Captain General" was to be constantly attended by two or more councillors from each colony. His salary was to be conferred upon him independent of the pleasure of the inhabitants. By this scheme men and money could be raised as they were needed. To make the plan still more successful the president of the Board should be given a free hand with power to control all matters relating to the plantations.[2].

There is no question but such a plan of union would have made the government in the colonies efficient from a military point of view, but the plan was out of harmony with the course of English constitutional development. Englishmen had been accustomed to too many years of government of their own representatives to submit gracefully to a form of military despotism. But what was true of

1. N. Y. Doc. V, 627.
2. Ibid.

Englishmen was especially true of Englishmen with a century of experience in governing themselves in a new country. Nevertheless the plan was so far adopted that the Earl of Stair was offered the office of "Captain General", but he refused.[1].

The next plan of union proposed by the board was drawn up at the request of Secretary Robinson, acting in his official capacity, on the eve of the French and Indian War.[2]. In this plan it was proposed that commissioners should be appointed by each colony.[3]. These were to meet at some central point and agree upon the number of forts necessary for the defense of the colonies; the number of soldiers necessary for garrison duty and for defense; and the quotas of men and money each colony should furnish. The government in England was to appoint a "Commander in Chief and Commissioner for Indian affairs." The commissioners from the different colonies were to agree that the "Commander in Chief" was to have complete control of all relations with the Indians and to have command of all troops raised in the colonies. He was also to have power to draw upon all the colonies for money, in the proportions agreed upon, as he saw fit. These orders on the colonial treasurer were to be paid when presented out of any money on hand. If the treasurer did not have money to pay the draft, he was to borrow a sum sufficient to do so. Commissioners from seven of the colonies were to constitute a quorum, a majority could decide, and the plan once drawn up and signed by the King was to be binding upon all the colonies.

While the above plan was being prepared by the Board, the colonists themselves, were considering a plan of union at the congress

1. Chalmers, Int. to the Revolt, II, 43.
2. N. Y. Doc. VI, 844.
3. Ibid, 903.

at Albany. The discussion of the plans proposed at this congress does not come within the scope of this paper, neither does an account of the failure of the colonists to accept the plan of the Board. It need only be noted that the last plan of the Board, like its former plans, contemplated only an executive union for all ordinary occasions. It differed, however, in the mode of establishing the proposed central power. For the first time the Board proposed to consult the desires of the colonial governments in the matter.

In discussing the relations of the colonies to each other a few words should be said concerning boundaries between the different colonies. In general the Board, as the representative of the crown, claimed the right to arrange for the settlement of boundary disputes. In 1740, the Board, in answer to requests from the two provinces involved, appointed a commission to determine the boundary between Massachusetts and Rhode Island.[1] The expenses of this commission were borne by the two colonies. In 1747, New Jersey passed an act for determining the boundary between that colony and New York.[2] Out of this action of New Jersey a dispute arose that finally came before the Board. It gave its decision in 1757. New Jersey was declared to have no power to establish boundaries. Such questions could only be decided by mutual concessions, or by a commission appointed by the crown.

As the crown was not a party to the proceedings, the Board refused to approve the act, more especially as the parties involved could not agree upon the acceptance of the work of the commission

1. N. Y. Doc. VI, 167.
2. Ibid, 773.

appointed under authority of this act. Besides the interests of the crown were at stake. New York was a crown colony while New Jersey was, in the form of her land grants, a proprietary colony. In the adjustment of the boundary, lands that should be in New York might be assigned to New Jersey. In such a proceeding the crown might be deprived of quit rents to which it was legally entitled. Thus in the regulation of their territorial claims the colonies had to submit to the arbitration of the Board or mutually agree as to what were their actual boundaries.

CHAPTER IV.

Failure in America and Attempted Reforms

The Board controlled the colonies by an exercise of royal prerogative. The field of this control has been discussed. It remains to be shown how, step by step, the assembly broke through the prerogative and established in its place responsible government under its own control. Having shown that, it is necessary to trace the attempt of the Board to bolster up the authority it saw slipping from it.

I.

Development of Responsible Government in the Colonies.

In any treatment of colonial history it should be borne in mind that the American settlers were in the main Englishmen. Not only were they Englishmen, but those of New England were Puritans as well. They had left England during the darkest hours of the struggle against the arbitrary rule of Charles. Their ideas of independence in the control of their own local affairs had developed in the years when they had been left almost unmolested, until they were in no mood to submit to any form of government that they, themselves, could not control. What was true for New England was more or less true for all of the colonies. Above all else, the colonist considered himself an Englishman, and by virtue of that fact entitled to all the rights his fellow-countrymen were accustomed to enjoy in the mother country. One of these was the right to control taxation

and the administration of justice. It is probably true that the period of the commonwealth, and especially the revolution of 1688, had a profound influence upon all of the colonies. They could not understand why they should not share in the benefits of this last glorious event. But they were to find that the struggle in England was not for them, and that they had to struggle, during the eighteenth century, to wrest from the home government the same precious privileges their fathers and fore-fathers had wrested from the King. It was a continuation here in America of the Puritan Revolution. This, I believe, is the one thing the most of our American historians have failed to grasp.

The form of government in the royal provinces was the product of the period of absolutism in England, and was but a miniature copy of the government there. The assembly corresponded to the House of Commons, the council to the Lords, and the governor was but the representative of the absolute power of the home government. Because of the irresponsible position of the governor and his council, the royal provinces were an anomoly among English forms of government. It was because the English statesmen failed to recognize this anomoly, that the colonies were forced into establishing a central government for themselves. Mr. Chalmers in his "Introduction to the History of the Revolt in the Colonies" assumes that the struggle of the colonists to secure the same degree of responsible government as existed in England was, in fact, a struggle for real independence. In doing so, he but illustrates the failure of the average Englishman of his time to grasp the real significance of the movement. It was local autonomy, rather than independence,

that the colonists were aiming at; and it is now our purpose to show how the assembly secured almost complete control of the government of the colony, in spite of all the influence the Board was able to bring to the support of the prerogative.

It has been the ability to control the purse of the nation that has enabled the House of Commons to secure control of the government in England. In a similar way the assemblies in the colonies, by an exercise of the same power, were able to secure a similar commanding position for themselves. In New York, the first steps in the movement were taken in 1705. The frontiers had to be defended. The money to pay for such protection was lodged with a treasurer named by the assembly, instead of with the receiver general. The governor and council were to have no voice in its expenditure. The protests of Cornbury and his council that such methods were directly contrary to the instructions of the governor, were met by the assembly with the assertion that the assembly was supreme in money matters, and that it would recognize no right of the council to amend a money bill. The necessities of the case were so great, that the governor and council were compelled to give way. This point once won was never lost, but was used as a means of acquiring still more power.

In Governor Hunter's administation, the assembly not only placed money for extraordinary expenditures in the hands of their own treasurer, but required that all taxes should be placed in his hands. Again, as before, the council was not permitted to amend a money bill.[1]. This refusal to recognize the right of the council to a voice in financial legislation was a direct attack upon the

1. Hunter to the Board of Trade, Nov., 1710. N. Y. Doc. V, 183.

coordinate power of that branch of the legislature. The Board insisted that the two chambers were coordinate in all legislation;[1]. and Governor Cornbury attempted, but without success, to maintain that position for the council. Governor Hunter failed on the same point. So jealous was the assembly of its newly won privilege, that when it was found necessary to amend a money bill after it came to the council, no difference how trivial the amendment, Governor Hunter was compelled to return it privately to the speaker as though it had never been read in the council.[2]. The assembly made the corrections, and the council formally considered the bill as though it were the first time it had been presented.

The Board of Trade was determined not to allow the growing encroachments of the assembly to make the governor and his council wholly dependent upon that body. When the instructions to Cornbury and later to Hunter failed to secure the desired result, the Board reported the whole condition of affairs to the Queen in Council and recommended that Parliament be asked to interfere. The specific remedy was a law establishing a fixed revenue for the support of the governor in New York, so as to make him independent of the Assembly. In 1711 the bill was drawn up, but failed of passage, because of conflict of party interests in England. As a temporary measure, the Board asked Secretary St. John to send Hunter a statement of the Queen's disapproval of the action of the assembly.[3]. But no threats or statements of disapproval were sufficient to intimidate the delegates.

1. Board of Trade to Governor Cornbury. N. Y. Doc. IV, 1171.
2. Board of Trade to the Queen, Nov., 1711. N. Y. Doc. V, 288.
3. N. Y. Doc. V, 329.

That the Board clearly recognized the importance of the rising power of the assembly and the danger it threatened to the Board's control of colonial affairs, is shown by their strenuous efforts to secure effectual interference by the British government. In its appeal to the Earl of Dartmouth in 1713,[1] after reciting the encroachments of the assembly, it added, "these are some of the proofs of their undutifulness to Her Majesty, and of their attempting to abridge the royal prerogative there, on which Colonel Hunter observes in one of his last letters, that if the remedy be long delayed it may cost more than the province is worth." It showed how the action of the New York assembly would be a bad example to the other governments, "who, most of them, have already shown too much inclination to assume pretended rights tending to an independency on the Great Britain." Before the Board could secure the enforcement of its orders, the changes due to the accession of George I had swept all the efficient members of the Board out of office.

During the next few years, the power of the assembly continued to develop. In the settlement of the revenue in 1715, Hunter was compelled to allow the funds to be placed in the hands of the treasurer. In answer to demands on the part of the Board for an account of the public funds, Hunter was compelled to say in 1718 that the treasurer refused to have his books audited, that he was responsible only to the assembly.[2] Under the succeeding governors the assembly used its power of appropriation to attack the power of the governor and of the Board to appoint officers. Instead of appropriating a

1. N. Y. Doc. V, 359.
2. Ibid, 514.

lump sum for salaries of officers, it named the officer and the salary he was to draw, in the bill itself. If an officer was distasteful to the assembly, his salary was reduced or entirely omitted. If the assembly desired that a particular man should be appointed to a particular office, his name was put in the appropriation bill, and the governor had little choice but to consent to the selection. If the council sought to assert its power, it was curtly told that it could not be allowed to touch a money bill. Thus practically the whole machinery of government was brought into the control of the assembly.

This growth of the power of the assembly was slow, not sudden. Prior to 1737 the regular revenues were appropriated in a lump sum without the application of it to particular services, with the exception of the pay of the assembly and the treasurer.[1] But at the commencement of Governor Clark's administration in that year, a portion of the revenue was applied to the payment of particular services. In this way, the assembly not only made the officers dependent upon it for their salaries, but the actual nomination of the officers was taken out of the control of the governor.[2] Clinton became governor in 1744. The first revenue bill contained these same features, and he seems to have been given an extra inducement in the way of salary in return for his approval.[3] Having once yielded, he was never able to break the custom. War and its necessary heavy expenses only increased the power of the assembly. In practically all the appropriations commissions were named to control

1. N. Y. Doc. VI, 640.
2. Ibid.
3. Ibid, 641.

the expenditure of the funds. Not only that; but the actual control of the troops was taken out of the hands of the governor, by means of special orders of the assembly.

This gradual lessening of the power of the executive was not allowed to take place without protest. Governors appealed to the Board for instructions how to check the encroachments on the executive, but the only remedy that body could offer was powerless to check the movement. The governor was instructed to insist upon what the assembly refused to grant. During the later years of the movement the Board was hopelessly indifferent or incompetent. In answer to Lieutenant Governor Clark's statement that he had refused to allow the appropriation bill because of the manner in which it was drawn, the Board wrote him that the power of appropriation was in the hands of the assembly, but the disposal of it was in the hands of the governor and council. In answer to this, Clark pointed out how these appropriation bills also disposed of the funds.[1]. The letter of the Board had indicated that it had little conception of the possibilities of an appropriation bill. Some ten years later this answer of the Board was used by the assembly as an argument against Clinton's conduct, and as a proof that the Board was in sympathy with the attitude of the assembly.[2].

The assembly not only seized complete control of financial affairs, but created for itself special privileges calculated to protect its independent position. Members were forbidden to disclose the secrets of the house under the most severe penalties. Freedom

1. N. Y. Doc. VI, 141.
2. Report of the Board of Trade, 1751. N. Y. Doc. VI, 696.

of debate was secured and members were not to be subject to question elsewhere for any action as a member of the assembly.[1] There was one step still necessary to safeguard the privilege already secured. That was the full control of the agent in London. This was secured in 1748 by inserting his name and salary in the regular appropriation bill, and directing that he should act and speak only as the representative of the assembly. Clinton could not veto it without losing his own salary and causing much public discomfort. He asked the Board to refuse to recognize the new agent,[2] but that body could only answer that the governor's signature made the act legal, and that it could not be disallowed without creating grave disorders in the colonial government.[3] At the same time, he was told that the provision for the agent should have been made in a separate act.

In 1748, Governor Clinton sums up the encroachments of the assembly and the weakness of the prerogative.[4] The council must accept or reject a money bill exactly as it comes from the assembly. The payment of the forces and passing of muster rolls was in the hands of commissioners appointed by the assembly. Salaries were granted to the officers personally by name, instead of to the officer for the time being, "by which the assembly intimate that if an officer is appointed, his salary must depend upon its approbation of the appointment." Money was issued without warrant. The agent in London took his directions from a committee of the assembly, and

1. Attorney General Bradley to the Board of Trade, N. Y. Doc. V, 901.
2. N. Y. Doc. VI, 420.
3. Ibid. 427.
4. Ibid, 456.

was paid by warrant of the speaker. To compel Mr. Clinton, to sign these measures they were attached to the bill for the payment of the forces on the frontier, so he must either sign the bill or leave the colony defenseless. He concluded by saying that peace will remove the necessity of providing for defence, and the time was ripe for taking measures to restore the prerogative.

There was at last an efficient man at the head of the Board.[1] The condition of affairs in New York were taken into consideration and measures proposed by which the former authority of the crown could be restored. The plan was to send out a new governor, with new instructions and more positive orders. But the outbreak of the war with Canada found the assembly issuing money in exactly the same way as before, in spite of orders and instructions. The necessities of the time were too great to allow a quarrel as to the source of authority to cripple military operations. Consequently the assembly continued to exercise almost as wide power as a real House of Commons, which it assumed itself to be.

Not only did the assembly reduce all of the administrative officers to a condition of complete dependence, but it also attacked the independence of the judiciary. It has already been shown how the assembly denied the legality of the court of chancery. In 1726, the action of Chief Justice Morris in a case at law was contrary to the desires of a number of the delegates. He was punished for his independency by having his salary reduced. His protest that the assembly was assuming greater powers than did the House of Commons was unheeded by the delegates.[2] A dissolution of the assembly was

1. Halifax.
2. Chalmer's Int. to the Revolt in the Colonies, II.

followed by similar action by the delegates at the next session. Salaries were reduced, the supreme court was attacked and it was resolved that the court of chancery had been established by incompetent authority.[1]. After this, the judiciary does not seem to have been attacked. Perhaps there was no occasion for it, as the officers had learned their lesson.

What was true of the assembly in New York was true of that of nearly every other colony. In the charter and proprietary colonies the assembly considered itself practically independent of the control of the crown. But in Massachusetts there was a spirited struggle to prevent the council from amending a money bill, and to compel the governor to allow the assembly entire freedom in the selection of its speaker. The control of the troops was more than once seized by the assembly in the same manner as did the New York assembly. The dependence of the officers on the assembly was noticed by the Board in its report of 1731-2 and was represented as so great that the governor was tempted to give up the prerogative.[2]. In Pennsylvania, acts were amended and prolonged after the time they should have been transmitted to the Board. By this means laws were perpetuated detrimental to the prerogative and to the trade of England. In New Jersey, the people had "taken every opportunity of trampling on the authority of the crown, and did not fail to take every advantage of a jurisdiction so absolutely placed in their power."[3]. In 1751, Governor Thomas wrote the Board that the assembly "was so intoxicated with power that no body of representatives

1. Chalmer's Int. to the Revolt in the Colonies, II.
2. Ibid, 118.
3. Ibid, 255.

had ever made so bold an attempt to seize the whole authority of government."[1]. Thus it is evident that the movement to secure the real control of all departments of government by the assembly was common to practically all the colonies and not peculiar to New York. It is also evident that the attempt of the Board to support the governor and the prerogative with which they clothed him failed in the other colonies. This was perfectly evident to the Board when it made its report of 1751.

Although the Board expended much energy in its attempt to maintain irresponsible forms of government, it also directed the governor of New York that he must not interfere with the legislative duties of his council. The arguments of the Board in this case are as clear and logical as any advocate of parliamentary government could wish. In this case the Board demonstrated that it did not wish to maintain a form of government that was distinctly ill-balanced. It is strange that it should have failed to recognize the same unequal balance of powers in the attempted control of financial affairs.

II.

Attempts to Strengthen the Power of the Board.

The main reasons for the failure of the Board to control colonial affairs have already been indicated. In brief they were inefficiency on the part of the Board; the weakness of that body's position and the consequent di ision of responsibility; i ability to

1. Chalmer's Int. to the Revolt, II, 255.

control the charter and proprietary colonies; and the absence of a fixed revenue for the support of the colonial government. The remedies proposed for these various defects were legislation by Parliament and reforms in the organization and authority of the Board.

By legislative action Parliament could suppress the charter and proprietary colonies and establish a fixed revenue for the support of the colonial governments. By reforms in the authority of the Board the division of responsibility could be ended.

The first serious attack by the Board upon the charter colonies was made soon after its organization, because of the failure of such colonies to suppress piracy and to enforce the navigation laws. In 1701 it made a report on charter governments. Its charges are best expressed in its own words. "That far from having answered the chief designs for which such large immunities had been granted, they had not, in general, complied with the late act of Parliament;-- that they had not only assumed the power of making by laws repugnant to the laws of England and destructive to trade, but they refused to transmit their acts or to allow appeals, and continued to be the retreat of pirates and illegal traders, and the receptacle of contraband merchandise. . . That since the royal commands had not met with due obedience, it might be expedient to resume their charters, and to reduce them to the same dependency as the other colonies, which will be best effected by the legislative power of this kingdom."[2]. The report to the House of Commons used even stronger language. "The denial of appeals is a matter which prevails so much in

1. Requiring pirates to be sent to England for trial.
2. Chalmer's Int. to the Revolt, I, 307.

proprietary and charter plantations, and the independency they first enter is now so notorious that it has been thought fit these considerations should be laid before Parliament."[1]. The report aroused so much interest in the House of Commons that the Board was asked to furnish additional information concerning the shortcomings of charter and proprietary colonies.

In January, 1708, the Board reported in regard to Massachusetts. That colony had refused to furnish the quotas of men and money asked for. It was also charged that smuggling and piracy were both allowed by the authorities of that colony. To remedy these defects the Board thought "the national interest required that such independent administrations be placed by the legislative power of this kingdom in the same state of dependence as the royal governments."[2].

The recommendation of the Board was acted upon. A bill was introduced in Parliament providing for the suppression of all charters and the purchase of all proprietary titles. The bill failed to pass. Just what influence defeated it we do not know. No doubt both the proprietors and the agents of the charter governments were able to bring powerful influences to bear against the measure. Possibly bribery was one of these. Perhaps Parliament was influenced by the opinion of Godolphin and Governor Hunter that if the proprietary governments "were purchased on their present footing, the Queen will pay dear for such trouble and no dominion."[3].

Although the bill failed, the Board continued to recommend the necessity of some such action by Parliment. Affairs in Rhode

1. Chalmer's Int. to the Revolt, I, 307.
2. Ibid, 306.
3. Ibid, 280.

Island caused the Privy Council in 1700 to ask the Board to inform them of all the "misfeasances of the charter colonies and all the advantages that may result from resuming the government." A law, such as the Board asked for was never passed, but the possibility of its passage was used by the Board as a convenient club to secure submission. In some cases the threat seems to have been effectual.

The Board early recognized the inherent weakness of its own authority and sought the aid of legislation by Parliament. Even after the failure of the attempt to reduce all colonies to the royal type, it hoped to secure submission to its orders by other legislation. Thus in 1714, the Board reported that an act of Parliament was necessary to compel Carolina, Maryland, Connecticut and Rhode Island to submit their laws for royal revision.[1]. But even this apparently simple legislation was not passed. Again in 1722, the Board reported the necessity for legislation in regard to Massachusetts as a result of the quarrel between Governor Shute and the assembly. "So strong a colony should be restrained within the bounds of obedience to the crown . . . ; which cannot effectually be done without the interposition of the British legislature, and no time should be lost."[2]. Massachusetts, however, was able to prevent any legislative action by Parliment.

Governor Clinton, in 1747-48, made repeated appeals to the Board and to Newcastle for some sort of legislation by which the prerogative could be restored. In its report to the cabinet, in June, 1748, the Board reported the conditions in New York and sug-

1. Chalmers, Int. to the Revolt, II, 5.
2. Ibid, 25.

gested that perhaps the intervention of Parliament had become necessary.[1]. As has been shown, however, Parliament did not interfere at that time, and reforms took the shape of new instructions to the governors. The threat of action by Parliament was used in many of the crown colonies to secure concession from an obstinate assembly. Such intervention was always a possibility and an undesirable one from the standpoint of the colonists.

It has already been shown how the assemblies were able to use their power to give or withhold salaries to secure concessions from the governor. The New York assembly refused to grant Hunter a permanent support as his instructions required. He, like other governors, believed it was within the power of the British government to assign a fixed revenue for the support of the colonial governments; consequently, he appealed to the Board. That body favored the plan. It had seen the evil results of a system that was making the governor more and more dependent upon the wishes of the assembly. In 1711 they drew up a bill providing for the establishment of a fixed revenue for the government in New York. The bill failed to pass before the adjournment of Parliament. The Board of Trade, however, did not despair , and wrote Hunter that they had no doubt proper measures would be taken for giving him the support he needed.[2]. At the next session the bill again failed, because of the adjournment of Parliament. But the Board promised to secure its passage at the next session. Perhaps it was sincere in its hopes, but there were influences at work that were strong enough to defeat any such measure.

1. Chalmers, Int. to the Revolt, II, 256.
2. N. Y. Doc. V, 285.

In the meantime Hunter had despaired of interference from England and was compelled to make terms with his assembly as best he could. In 1713, he wrote that the fears of the assembly that the proposed act would pass, had induced it to vote a sufficient revenue for the support of the government.[1]. This revenue, however, was for only one year. Hunter began to doubt whether the government in England was really in earnest. In 1714, he wrote Secretary Popple. "You know well that the revenue bill was never intended to be passed, though prepared by the Lords of Trade."[2].

Chalmers thinks that Hunter was right in thinking the ministry had no intention of establishing a fixed revenue for New York and uses the following argument to explain the motive back of the failure of the bill. "We may determine with regard to the motive, by what appears in a letter from Hunter of November 8, 1715, to the Earl of Stair 'that it had been the opinion of his friends, during the last reign that the act of Parliament should not pass, because he would be superseded were a salary established.' Hunter desired Lord Stair to remember him to the Duke of Marlborough, Lord Somers, Lord Godolphin and other great Whigs. We may thence infer that these men were 'his friends' who prevented the passing of the act of Parliament during Lord Oxford's administration, for a reason that shows that they had been acquainted with courts."[3].

The above explanation may be very near the truth. If it is true, it but illustrates how effective government in the colonies was hampered by the petty politics of the time. This was the last

1. N. Y. Doc. V, 366.
2. Chalmers, Int. to the Revolt, I, 272.
3. Ibid.

serious effort the Board made to establish by act of Parliament the salary that should have been voted by the colonial assembly. By concessions, Hunter was able to secure, in 1715, a revenue for five years. His successors were of a trading disposition and not disposed to resist very strenuously the encroachments upon the prerogative. Thus the questions of revenue dragged along until the period of greatest indifference on the part of the Board, and the only remedy at all adequate for the evil was never applied.

Some of the laxity of administration can be traced to the division of responsibility in England. Too often the Board was not consulted about appointments and other matters of importance to the colonies. More often still, the most carefully conceived plans of the Board were allowed to fail because the ministry either did not wish to carry them out or because of court influence. The Board, itself, complained of this condition of affairs in 1731.[1] It pointed out in its report how the method of transacting business caused delay and confusion. There were no less than three methods of procedure in colonial affairs; by direct application to the King by one of the leading secretaries of state; by petition to the King in Council; or by representation to the King by the Board, itself. Because of these various methods no one office was informed on all matters relating to the colonies. What was worse, however, no one man or body of men was responsible for the carrying out of a definite policy in all colonial relations.

The complaint of the Board brought no improvement in the management of affairs. In fact affairs went from bad to worse, the

1. N. Y. Doc. V, 627.

principal secretaries of state interfering more and more with the legitimate work of the Board. No doubt the real difficulty, as has been suggested, was in the character of the men on the Board, but the ministry was responsible for the men. Real reforms did not come until 1752, when under George Dunk the Board of Trade again became the controlling influence in all colonial affairs. The reforms came at the time the new and more rigid instructions were sent to the governors.

By changes in 1752 real power was placed in the hands of the Board. All colonial correspondence was, thereafter, to be addressed to it. At the same time the Board was made the channel for all orders to the colonial officers. Instead of the Board drawing up instructions at the order of the secretaries of state or the order of the Privy Council, it now determined what was necessary and the ratification of the Privy Council of the instructions and orders was a matter of form.

A still more important change was made in regard to the appointment of officers to positions in the colonial service. For years such positions had been distributed as prizes by the leading politicians. Men were chosen, not because they were fitted to perform the duties required, but too often because they were related to Newcastle. According to the Order in Council of March 11, 1752,[1] the Board was given power to make appointments for all offices in the colonies, not directly connected with the customs service or the admiralty. The officers appointed by the Board were to be responsible to and under the control of that body.

1. N. Y. Doc. VI, 757.

There was needed one more change. The man at the head of the Board and responsible for colonial affairs should have been one who was empowered to speak of such things in the Privy Council. The council must of necessity often consider questions of the utmost interest to the colonial service, and the same persons should discuss them in council who were expected to carry out the decisions. This change had already been proposed by the Board, but was not secured for some years. At last Halifax succeeded in getting himself admitted to the cabinet with control over colonial affairs. Then, and then only, could the policy adopted be backed by both the entire executive and legislative powers of government. The history of the relations of the regenerated Board of Trade to the colonial governments is a subject just beyond the limits of this paper.

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